

*Tyler*

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EASTERN DISTRICT OF TEXAS

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U.S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

**FILED**  
U. S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

DEC 16 2003

DAVID MALAND, CLERK  
By  
Deputy

(1) BBG COMMUNICATIONS, INC.

VS.

Civil Case No. 2:03-CV-227

(1) NETWORK COMMUNICATIONS  
INTERNATIONAL CORP.;  
(2) WILLIAM POPE;  
(3) JAY WALTERS; and  
(4) JEFFERY WALTERS

(WARD)

**PLAINTIFF BBG COMMUNICATIONS, INC.'S FIRST  
MOTION FOR PROTECTION**

Plaintiff BBG Communications, Inc. ("BBG") files this, its First Motion for Protection, and in support thereof would show the Court the following:

**I. BACKGROUND**

This motion relates to one specific issue: Where should BBG's Rule 30(b)(6) deposition take place - in San Diego, California, where BBG and its employees reside, or in Tyler, Texas, the district where this action was brought?

BBG initiated this suit June 19, 2003, by filing its Original Complaint and Ex Parte Motion for TRO to stop Defendant Network Communications International Corp. ("NCIC") and its principals, William Pope, Jay Walters, and Jeff Walters, from continuing their illegal interception of email correspondence intended for BBG and infringement of BBG's trademarks. BBG brought its complaint and application for TRO in the defendants' home district to avoid any issues of venue and personal jurisdiction that might otherwise delay the emergency relief sought. Upon reviewing BBG's filing, the Court granted BBG's application for TRO and

41

temporarily restrained the defendants' damaging conduct. (Temporary Restraining Order, Docket entry # 14, June 19, 2003). The Court also authorized BBG to take the limited expedited discovery in the form of a 30(b)(6) deposition of NCIC. (Docket entry # 15, June 19, 2003). Counsel for BBG traveled to Tyler, Texas and conducted this deposition on July 14, 2003. (Wojciechowski Decl. ¶5.). Counsel for BBG also later took the deposition of Jeffery Walters in Tyler, Texas on September 15, 2003. (Wojciechowski Decl. ¶ 5.).

On December 5, 2003, NCIC noticed the 30(b)(6) deposition of BBG for December 16, 2003, and asked that BBG produce representatives knowledgeable about 23 different, wide-ranging categories of information. (See Exhibit A to Wojciechowski Decl.). BBG has identified at least 2 or 3 persons most knowledgeable about such information who will be required to testify on BBG's behalf. (Wojciechowski Decl. ¶ 1.) All of BBG's identified personnel reside in the San Diego, California area, BBG's principal place of business. (Wojciechowski Decl. ¶ 4.). Since receiving the notice, counsel for BBG has conferred on several occasions with counsel for defendants, requesting that the noticed deposition occur in San Diego rather than Tyler. Counsel for the defendants have refused this request.<sup>1</sup> (See Exhibit B & C to Wojciechowski Decl.).

BBG seeks to avoid the unnecessary and one-sided cost of producing its personnel for deposition Tyler, Texas when it is much less expensive and more fair for counsel for defendants to travel to San Diego and take the depositions of multiple BBG personnel. Accordingly, because BBG did not engage in forum shopping or attempt to assert jurisdiction over the defendants in California, but rather brought this case in the defendants' home district, thereby reducing the defendants' overall cost of defense, BBG seeks an order of protection from the

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<sup>1</sup> Counsel for the parties did agree, however, to reschedule the deposition originally noticed for December 16<sup>th</sup> for a mutually agreeable date during the first weeks of January, after document production pursuant to the Court's Discovery Order. The single issue in dispute concerns the location for that deposition.

Court requiring that the depositions of BBG personnel occur at its principal place of business in San Diego.

## II. DISCUSSION

Federal Rule of Civil Procedure 26 provides as follows:

"(c) . . . [O]n matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

\* \* \* \*

(2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place."

The court may make these determinations pursuant to a motion for protective order by a party sought to be deposed.

Under the prevailing case law, a party's deposition is normally taken in the district in which it resides or is employed or has a place of business. *See, Grey v. Continental Mktg. Ass'n*, 315 F.Supp. 826, 832 (N.D. Ga. 1970) ("unusual circumstances" required to justify putting party to inconvenience of deposition elsewhere). Moreover, where a corporate party designates an officer, director or employee to testify on its behalf, the deposition is ordinarily taken at the corporation's principal place of business. *Zuckert v. Berkliff Corp.*, 96 F.R.D. 161, 162 (N.D. Ill. 1982).

Here, BBG and its personnel all reside in the San Diego area. Furthermore, defendants' notice of deposition contains 23 categories of wide-ranging issues necessitates the production of

multiple persons to respond on behalf of the corporate entity. The balance of convenience, cost, and fairness counsel that the depositions should take place in San Diego.

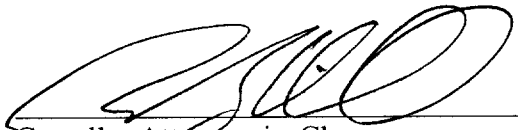
Moreover, this is not a case where BBG filed in this district as an exercise in forum-shopping. BBG brought its complaint and application for TRO in this, the defendants' home district to avoid any issues of venue and personal jurisdiction that might otherwise delay the emergency relief initially sought in the case. BBG should not now be forced to effectively bear all travel and business interruption costs associated with depositions simply because it came to the defendants' home forum to file suit.

As the court discussed in Archer Daniels Midland, Co. v. Aon Risk Services Inc., while there is a general rule that plaintiff is required to make itself available for a deposition in the district in which the suit was commenced, that rule is subject to exception when the plaintiff can make a compelling showing that its application would impose an unduly heavy burden, or that the overall efficiency of the discovery process would be better served by deposing the plaintiff, and its agents, outside of the forum district. 187 F.R.D. 578, 587-88 (D. Minn. 1999). BBG has already agreed to take the depositions of the defendants in the forum district. In light of how and why BBG came to this forum, that defendants be forced to reciprocate and take the depositions of BBG's personnel at its place of business in San Diego is only fair. To do otherwise would unduly place the cost of discovery, both in terms of travel and business interruption, upon BBG.

### **III. CONCLUSION**

For the foregoing reasons, BBG respectfully requests that the Court issue a protective order protecting BBG from producing its personnel in Tyler, Texas and requiring that their depositions occur at its principal place of business in San Diego.

Respectfully submitted,

By:   
Otis Carroll – Attorney-in-Charge  
State Bar No. 03895700  
Wesley Hill  
State Bar No. 24032294  
IRELAND, CARROLL & KELLEY, P.C.  
6101 S. Broadway, Suite 500  
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Tel: (903) 561-1600  
Fax: (903) 581-1071

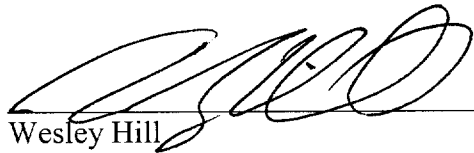
ATTORNEYS FOR PLAINTIFF  
BBG COMMUNICATIONS, INC

OF COUNSEL:

Tawyna R. Wojciechowski  
CA Bar No. 180,063  
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
A Limited Liability Partnership  
Including Professional Corporations  
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Costa Mesa, CA 92626-1925  
Tel: (714) 513-5100  
Fax: (714) 513-5130

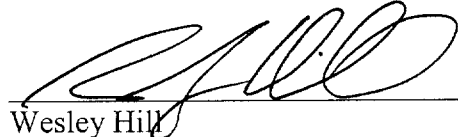
CERTIFICATE OF CONFERENCE

Pursuant to Local Rule CV-7(h), movant has contacted opposing counsel and was informed that opposing counsel is opposed to the relief requested herein. Accordingly, this matter is submitted to the Court for determination.

  
Wesley Hill

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served on all parties via United States mail this 16<sup>th</sup> day of December, 2003.

  
Wesley Hill

**DECLARATION OF TAWNIA WOJCIECHOWSKI**

I, Tawnia R. Wojciechowski, say and declare:

I am an attorney in the law firm of Sheppard, Mullin, Richter & Hampton LLP ("SMR&H"), counsel for plaintiff BBG Communications, Inc. ("Plaintiff") in this action. I am licensed to practice before this court on a pro hac vice basis and all the Courts of the State of California. I have personal knowledge of the following facts and, if called as a witness, could and would testify competently thereto.

1. Attached hereto as Exhibit "A" is a true and correct copy of Defendants' Notices of Deposition and Demand for Production of Documents, scheduling the depositions of BBG's persons most knowledgeable about 23 different categories of information. BBG has identified at least 2 or 3 personnel who will be required to provide testimony in its Rule 30 (b)(6) deposition as individuals having the most knowledge of the facts concerning those 23 categories of information.

2. Attached hereto as Exhibit "B" is a true and correct copy of my letter of December 7, 2003, requesting that the locale of the deposition be in San Diego, California rather than Tyler, Texas.

1           3. Attached as Exhibit "C" is an email received from Jerry Harper,  
2 counsel for Defendants, rejecting my request to hold these depositions in San  
3 Diego.  
4

5  
6           4. On information and belief, BBG and its officers/employees who  
7 would be deposed under Defendants' Rule 30(b)(6) deposition notice are all  
8 residents of San Diego County, California.  
9

10  
11           5. BBG has previously taken the deposition of William Pope, the  
12 Rule 30(b)(6) designee and President of defendant NCIC on July 14, 2003, and the  
13 deposition of Jeffrey Walters on September 15, 2003 in connection with this  
14 litigation. I flew out to Tyler (along with another attorney from my law firm, Jerry  
15 Gumpel, and our client representatives) for both of these depositions which I noticed  
16 to take place in Tyler, Texas. Both depositions were taken in Tyler, Texas.  
17  
18  
19

20           I declare under penalty of perjury under the laws of the United States  
21 and State of California that the foregoing is true and correct and that this declaration  
22 is executed on December 16, 2003 at Costa Mesa, California.  
23

24  
25  
26  
27  
28  
  
TAWNYA R. WOJCIECHOWSKI

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**BBG COMMUNICATIONS, INC.**

**CIVIL ACTION NO. 2:03-CV-227**

**VERSUS**

**JUDGE WARD**

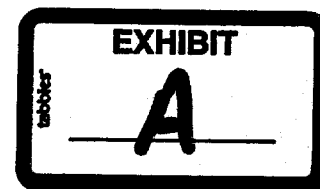
**NETWORK COMMUNICATIONS  
INTERNATIONAL CORPORATION,  
WILLIAM POPE, JAY WALTERS, and  
JEFFREY WALTERS**

**NOTICE OF RULE 30(b)(6) DEPOSITION  
AND REQUEST FOR PRODUCTION OF DOCUMENTS**

NOW INTO COURT, through undersigned counsel, comes defendants, NETWORK COMMUNICATIONS INTERNATIONAL CORPORATION, WILLIAM POPE, JAY WALTERS and JEFFREY WALTERS, who hereby provide notice to all parties that it will take the oral deposition of plaintiff, BBG COMMUNICATIONS, INC., pursuant to Fed. R. Civ. P. 30(b)(6), on December 16, 2003, at 9:30 a.m. at the offices of Ramey & Flock, P.C., 100 East Ferguson, Suite 500, Tyler, Texas 75702, for all purposes, before a duly authorized court reporter, and continuing from day to day thereafter until completed.

Pursuant to Rule 30(b)(6), plaintiff is obligated to produce the most qualified person(s) to testify on its behalf regarding each of the following matters (except as otherwise noted, such subjects and related document requests should deal with the time period from January 1, 2003 to the present):

1. The identification of the shareholders, officers, directors, key employees and sale agents of BBG Communications, Inc. and its foreign and domestic affiliates, as well as the corporate structure and hierarchy of each;
2. The identification and description of the policies and procedures of BBG and its affiliates with respect to ethical conduct of its employees, agents, and independent sales agents and contractors in the market place;



3. A description of the actual, customary and usual means of determining compensation and paying compensation to the employees, agents and sales representatives of BBG Communications, Inc. and its representatives and the actual compensation paid as a result thereof;
4. The identification of (i) the business conducted by BBG Communications, Inc., and its affiliates, (ii) its methodologies, means and philosophies of conducting business, and (iii) the identification of all entities or individuals considered to be competitors thereto;
5. The identification of all documents created, received or otherwise obtained by BBG Communications, Inc., its officers, directors, shareholders, agents, independent contractors and/or sales representatives, or any affiliates thereof relating to Network Communications International Corporation ("NCIC"), William Pope, Jay Walters, Jeffrey Walters, BluePhone, Ltd., ICS, Ton Hoogstratten, Ronald Perez, Michael Stomps, Awi Fang a/k/a Suriyanto Suriyanto, Goren Alexiev, Michel Alexiev, Patrick Mauchant, Keven Watt and/or NCIC Bermuda, Ltd.;
6. The identification of all documents or information orally conveyed which relates or pertains to NCIC or its affiliates or their respective businesses, prospects, contracts, call volumes, communications among agents, employees, or contractors obtained by BBG, its affiliates, officers, directors, shareholders, agents, independent contractors and/or sales representatives, from any of the following persons prior to July 20, 2003:
  - a. Ronald Perez
  - b. Ton Hoogstratten
  - c. Michael Stomps
  - d. Awi Fang a/k/a Suriyanto Suriyanto
  - e. Goren Alexiev
  - f. Michel Alexiev
  - g. Patrick Mauchant
  - h. Keven Watt
7. A full description, to the extent not privileged, of the investigation you have conducted, if any, with respect to the allegations in the counterclaim and third party claim in this action;
8. The identification of findings and documents obtained as a result of the investigation, if any, identified in the immediately preceding subparagraph;
9. The remedial measures, if any, taken in connection with the matters described in the immediately two preceding paragraphs;

10. The efforts and actions of BBG Communications, Inc., their affiliates, and their respective officers, directors, agents, independent contractors and/or sales representatives in competing with NCIC and/or its affiliates, BluePhone, Ltd., NCIC Bermuda, Ltd.;
11. The identification of any oral or written communications by and between BBG Communications, Inc., its affiliates, officers, directors, shareholders, agents, independent contractors or sales representatives on the one hand and any of the following persons or entities on the other:
  - a. NCIC
  - b. William Pope
  - c. Jay Walters
  - d. Jeffrey Walters
  - e. Ton Hoogstratten
  - f. Ronald Perez
  - g. Michael Stomps
  - h. Awi Fang a/k/a Suriyanto Suriyanto
  - i. Goren Alexiev
  - j. Michel Alexiev
  - k. Patrick Mauchant
  - l. Keven Watt
  - m. NCIC Bermuda, Ltd.
12. The circumstances surrounding the business association established between BBG Communications, Inc. and/or any of its affiliates, their respective officers, directors, shareholders, agents, independent contractors or sales representatives on the one hand and any of the following persons on the other:
  - a. Ronald Perez
  - b. Michael Stomps
  - c. Awi Fang a/k/a Suriyanto Suriyanto
  - d. Goren Alexiev
  - e. Michel Alexiev
  - f. Patrick Mauchant
  - g. Keven Watt
  - h. NCIC Bermuda, Ltd.
13. The identification of any and all compensation arrangements between the parties identified in connection with the immediately preceding paragraph and the means by which such compensation arrangements were made;
14. The identification of all documents or other information obtained by BBG Communications, Inc. and/or its affiliates and/or their respective officers, directors, shareholders, agents,

- independent contractors and sales representatives arising, directly or indirectly, out of any of the matters disclosed in connection with the immediately two preceding subparagraphs;
15. Any facts pertaining to damage to, tampering with, entry into, reprogramming, tampering or any other operations or alterations performed on any telecommunications equipment owned by NCIC, BluePhone, Ltd., ICS, or any other competitor;
  16. Any acquisition of business, including obtaining or executing agreements with any person or entity which at any time during the immediately preceding twelve (12) months had done business with NCIC, BluePhone, Ltd. or any affiliate thereof;
  17. The identification of any payments made by BBG Communications and/or their affiliates and/or any of their officers, directors, employees, agents, independent contractors, or sales representatives on the one hand to any officer, directors, agent, employee, or other representative of any telecommunications company known by BBG Communications, Inc. to have conducted business with NCIC or any of its affiliates within the twelve (12) months immediately preceding such payment;
  18. The identification of any payments by BBG Communications, Inc. and/or any of its affiliates or their respective officers, directors, agents, shareholders, employees, independent contractors or sales representatives on the one hand and any government official in any jurisdiction in which NCIC or any of its affiliates conducted business within the twelve (12) months immediately preceding such payment;
  19. The identification of all facts and persons and/or documents with evidence the facts which support the allegations of the original complaint filed herein with respect to each of the defendants, individually (NCIC, William Pope, Jay Walters and Jeffrey Walters) to the extent not acknowledged in the answers and deposition testimony of William Pope and Jeffrey Walters;
  20. The identification of each and every element of damage claimed to be sustained by BBG Communications, Inc. as a result of the claims asserted in this action together with (i) a complete description of how each such element of damage was caused by each such defendant; (ii) the amount of damages sustained in connection with each such element of damage by each such defendant; and (iii) the identification of all witnesses and documents which evidence the foregoing;
  21. The extent which BBG has sought to mitigate its damages;
  22. The identification of all legal actions, overtly threatened or filed, in the last thirty-six (36) months, with respect to allegations that BBG Communications, Inc., its affiliates, employees, agents, independent contractors, officers, directors or shareholders have engaged in unlawful or unethical business practices, including, but not limited to:

- (a) offering to give or giving anything of value to any public officials;
  - (b) offering to give or giving anything of value to any employee, officer, director or agent of any customer or potential customer of BBG Communications, Inc. ;
  - (c) the destruction of property, including telecommunication equipment;
  - (d) reprogramming telecommunication equipment without the knowledge and consent of the owner or user thereof;
  - (e) misappropriation of trade secrets or confidential commercial information;
  - (f) commercial disparagement;
23. Any aliases used by officers, directors, employees, agents, independent contractors of BBG Communications, Inc.

**REQUEST FOR PRODUCTION OF DOCUMENTS**

In accordance with Fed R. Civ. P. 34, plaintiff is directed to produce at the deposition the following documents, records or other materials:

- 1. Any and all documents, recordings, or other materials evidencing, relating or concerning any of the Rule 30(b)(6) deposition topics specified above;
- 2. Any documents which relate or pertain to BBG;
- 3. Any documents which relate or pertain to communications with any person or entity who (which) at the time of the communications was providing services to or consuming services from NCIC or any of its affiliates, including, but not limited to the following:
  - a. Ton Hoogstratten
  - b. Ronald Perez
  - c. Michael Stomps
  - d. Awi Pang a/k/a Suriyanto Suriyanto
  - e. Goren Alexiev
  - f. Michel Alexiev
  - g. Patrick Mauchant
  - h. Keven Watt
  - i. Theo Heyliger - St. Maarten
  - j. Bram (A) van der Star - Netherlands
  - k. Andrew Sharp - England

l. Jose Fabio Parriaguirre - Costa Rica  
 m. Giselle Morio - Costa Rica  
 n. Maril Nunez de Falquer - Dom. Republic  
 o. Valérie Sbuelz - France  
 p. Dirk Scholing - Netherlands  
 q. Susan Thronson - USA  
 r. Gerardo La Femina - Italy  
 s. Arnel Brown - St. Maarten  
 t. Liz Molloy - Ireland  
 u. Maria Chris Baumer - Austria  
 v. Andy Boulogne - St Lucia (local partner)  
 w. Hubert Knulst - Australia (local partner)  
 x. Michael Dubero - Aruba (local partner)  
 y. Doug Scollin - Florida/Bahamas (agent)  
 z. Tom Mayer - Florida/Europe (customer)  
 aa. Mike Sre - California / Spain (customer)  
 bb. Steve Levine - Mission Communications (customer)  
 cc. Mike Vogel - Mission Communications (customer)  
 dd. Jeroen Sluiter - Netherlands/Austria (local partner)  
 ee. Ricardo Gonzalez - Texas (former employee)  
 ff. Berlin Key - Bahamas (local partner)  
 gg. Charles Lighthourne - Bahamas (local partner)  
 hh. Craig Roberts - Bahamas (local partner)  
 ii. David Lobo, Francis Lobo (Vishwagram Marketing) - India (local partner)  
 jj. Jean Pierre Choul - Antigua (local partner)  
 kk. Vance James / Island Plus - Partner in St Maarten (local partner)  
 ll. Antonia Windfield - St Maarten Manager of Island Plus  
 mm. Gilberto Caprino - St Maarten (agent)  
 nn. Keng Hai Chow / Swissotel - Singapore (customer)  
 oo. Aileen Wong - Hong Kong (customer)  
 pp. Norman Barr - Costa Rica (contract employee)  
 qq. Joseph Rivera - France (former customer / current BBG agent)  
 rr. Jose Nelson Mejia - El Salvador (customer)  
 ss. Hondutel - Honduras (former customer)  
 tt. 800Reverse - Australia (customer)  
 uu. Telecom New Zealand - New Zealand (customer)  
 vv. Shangri La Hotel Group - Hong Kong (customer)  
 ww. Zellmer Payphone Company - Germany (customer)  
 xx. StarHub - Singapore (customer)  
 yy. Tritel Payphones - Australia (customer)  
 zz. Leo Bezemer - Netherlands (agent)

4. Any documents which relate or pertain to communications with any consumer of telecommunications services, including customers of NCIC, the subject matter of which relates to NCIC, its officers, directors, employees, agents or independent contractors;
5. Any documents which relate or pertain to communications from BBG Communications, Inc. or its affiliates, to AT&T, or its affiliates, the subject matter of which is, in whole or in part, NCIC or its affiliates, officers, directors, employees, agents and/or independent contractors; and
6. Any communications between BBG Communications, Inc. or its affiliates and its officers, directors, employees, agents or independent contractors which relates or pertain to action proposed or actively taken with respect to NCIC equipment, sales agents, employees or customers.

Respectfully submitted:

JERALD R. HARPER  
A Professional Law Corporation

By: 

Jerald R. Harper  
La. Bar No. 6585

504 Texas Street, Suite 405  
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ATTORNEYS FOR DEFENDANTS  
NETWORK COMMUNICATIONS  
INTERNATIONAL CORPORATION, WILLIAM  
POPE, JAY WALTERS and JEFFREY WALTERS

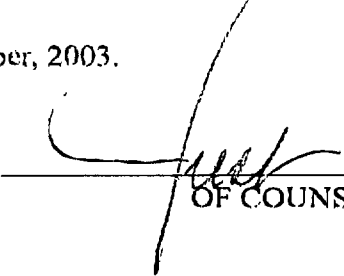
**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing NOTICE OF RULE 30(b)(6) DEPOSITION AND REQUEST FOR PRODUCTION OF DOCUMENTS has been sent to the following counsel of record by fax and by placing a copy of same in the U.S. Mail properly addressed and postage paid.

Ms. Tawnya R. Wojciechowski  
Sheppard, Mullin, Richter & Hampton, LLP  
650 Town Center Drive, 4<sup>th</sup> Floor  
Costa Mesa, CA 92626-1925  
Fax No.: 714-513-5130

Mr. Otis Carroll  
Mr. J. Wesley Hill  
Mr. Collin Maloney  
Ireland, Carroll & Kelley, P.C.  
6101 South Broadway, Suite 500  
Tyler, TX 75703  
Fax No.: 903-581-1071

Shreveport, Louisiana this 5 day of December, 2003.

  
\_\_\_\_\_  
OF COUNSEL

**JERALD R. HARPER, PLC**

A Professional Law Corporation  
504 Texas Street, Suite 405  
Post Office Box 72  
Shreveport, LA 71161-0072  
Telephone: (318) 221-1004  
Facsimile: (318) 221-0008

**FACSIMILE TRANSMITTAL LETTER**

Date: December 5, 2003

TO: Tawnya R. Wojciechowski FAX NO.: (714) 513-5130

Olis Carroll FAX NO.: (903) 581-1071  
J. Wesley Hill

CC: Tom Henson FAX NO.: (903) 597-2413  
Maria Sowders

William Pope FAX NO.: (903) 757-4899  
Jeffrey Walters  
Jay Walters

FROM: Jerry Harper

Total Pages (including this cover page): 9

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IF YOU DO NOT RECEIVE ALL PAGES  
OR HAVE ANY PROBLEMS WITH RECEIVING,  
PLEASE CALL: (318) 221-1004.**

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Writer's Direct Line  
714-424-2828  
[tawnya@sheppardmullin.com](mailto:tawnya@sheppardmullin.com)

December 7, 2003

Our File Number: 082X-105444

**VIA FACSIMILE**

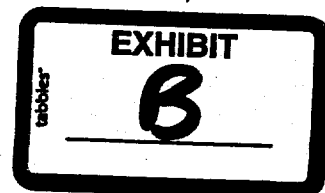
Mr. Jerry Harper  
Jerald R. Harper, PLC  
504 Texas Street, Suite 405  
Shreveport, LA 71101  
Facsimile: 318-221-0008

Re: Civil Case No. 2:03 CV-227 (Ward)  
BBG Communications v. NCIC, et al.

Dear Jerry:

I confirm receipt of your Notice of Deposition under Rule 30(b)(6) and the attached Request for Production of Documents under Rule 43. Please be advised that BBG shall be pleased to make its designees available for all 23 of the categories you designated for questioning at the deposition on December 16, 2003 at the BBG facilities in San Diego. As we had previously indicated to you, we do not believe you have given us any basis for proceeding with a general Rule 30 deposition (as opposed to an expedited deposition sought in connection with an application for preliminary relief and its associated supporting pleadings) in Tyler, Texas.

Normally, a party's deposition is taken in the district in which it resides or is employed or has a place of business. See, Grey v. Continental Mktg. Ass'n (N.D. GA 1970) 315 F.Supp. 826, 832 ("unusual circumstances" required to justify putting party to inconvenience of deposition elsewhere). Moreover, where a corporate party designates an officer, director or employee to testify on its behalf, the deposition is ordinarily taken at the corporation's principal place of business. Moore v. Pyrotech Corp. (D. KS 1991) 137 F.R.D. 356, 357; Zuckert v. Berkcliff Corp. (N.D.IL 1982) 96 F.R.D. 161, 162. Your 23 categories of wide-ranging issues necessitates the production of multiple persons to respond on behalf of the corporate entity. Absent your production of any justifiable basis for requiring BBG to incur unreasonable, substantial additional costs by having the deposition of multiple personnel in Tyler, we shall seek a protective order of the court to prevent your client from subjecting BBG to this burdensome and inconvenient deposition.



SHEPPARD MULLIN RICHTER & HAMPTON LLP

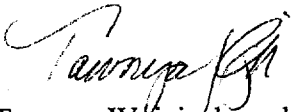
Mr. Jerry Harper  
December 7, 2003  
Page 2

Additionally, you noticed the production of documents at the deposition under Rule 34. Please be advised that while we are currently preparing our initial disclosure and production of documents in accordance with the court's scheduling order, we cannot and will not be able to produce all of the additional documents that you request by the proposed time of this deposition (within one week). Moreover, any production of documents under Rule 34 allows the producing party no less than 30 days to prepare and serve its responses to any document demand. See FRCP Rule 34(b). As such, we shall be pleased to prepare and serve our objections and/or responses to such document demand within such 30 day period and/or produce any unobjectionable and unprivileged responsive documents we are able to obtain during such time.

Please advise us by the close of business on Tuesday whether you will agree to take the deposition of BBG's designated 30(b)(6) representatives on Tuesday, December 16 at BBG's facilities in San Diego (Upon your request, we are also willing to make our law firm's offices in downtown San Diego available on such date). If you wish to reschedule the deposition to take place in San Diego after our production of any relevant documents, we would also be pleased to work out a mutually agreeable date. Absent your agreement to the above, we shall seek the protection of the court under a Rule 26 motion for protective order, and request that the court order our fees/costs associated with the preparation of such motion as discovery sanctions.

Please feel free to contact me directly to discuss any questions you may have.

Very truly yours,

  
Tawnya Wojciechowski

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

W02-OC:NTW41343215.1  
Enclosures

cc: Jerry Gumpel, Esq.  
  
Wesley Hill, Esq.  
Maria Sowders, Esq.



4th Floor | 650 Town Center Drive | Costa Mesa, CA 92626-1925  
714-513-5100 office | 714-513-5130 fax | [www.sheppardmullin.com](http://www.sheppardmullin.com)

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Mr. Jerry Harper

Facsimile No.

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Telephone No.

318-221-1004

From: Tawnya Wojciechowski

Re: Civil Case No. 2:03 CV-227 (Ward)  
BBG Communications v. NCIC, et al.

**MESSAGE:**

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WT: Waiting Transfer  
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-----Original Message-----

From: Harper [mailto:harper@mmw-law.com]  
Sent: Wednesday, December 10, 2003 6:44 AM  
To: jgumpel@sheppardmullin.com  
Cc: rameyflock.comt.thenson@; internet  
Subject: Re: BBG vs. NCIC

Let me respond to both of Tawnya's letters last two communications. We have addressed them both directly before: First Tawnya's letter expressing an understanding that no answer is required of BBG and that a new delay runs from service of an amended counterclaim is not correct. This was the last issue addressed in our "Rule 11" conference and I raised it to make sure there was no misunderstanding on this issue. It appears my efforts to eliminate all confusion on this issue has, for whatever reason, failed. With respect to the location of the 30 B(6) deposition we have addressed this several times: We both have been advised with respect to the practice and law in the Eastern District of Texas. We believe the deposition is properly noticed in Tyler. We have, however, attempted to reach your local counsel, to let him know of our willingness to have some flexibility on the date to accommodate the production of documents on a timely basis. We believe that no one's interest is served by several sittings for this deposition. Please let us know if this will help ease any inconvenience to you. Thanks.

Jerry:

Neither I nor Tawnya have had a response to Tawnya's letter to you ( sent yesterday ) regarding the BBG deposition. Let us know where you stand on her request.

Jerry

Jerry Gumpel  
Sheppard Mullin Richter & Hampton, LLP  
12544 High Bluff Drive, Suite 300  
San Diego, CA 92130-3051  
Tel (858) 720 8965  
Fax (858) 509 3691

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